

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

31041

FILE:

B-217174

DATE: April 22, 1985**MATTER OF:**

Harris Corporation

DIGEST:

A protest is sustained where the agency rejected a potential source of supply by making award on a sole-source basis prior to the expiration of the mandatory 30-day Commerce Business Daily (CBD) publication requirement outlined in the Small Business Act, as amended by Pub. L. 98-72, and where the protester's offered products comply with the requirements of the procurement as outlined in the CBD synopsis.

Harris Corporation (Harris) protests the sole-source award of delivery order (DO) DABT-84-F-7882, to IBM Corporation (IBM), by the United States Army, Fort Dix, New Jersey (Army), for the purchase and installation of video display terminals, matrix printers, remote controllers and other related automatic data processing equipment (ADPE). Harris contends that the Army improperly failed to consider its equipment because the Army made award in less than the required 30-day period after synopsisizing the procurement.

We sustain the protest.

On August 24, 1984, the contracting officer forwarded to the Commerce Business Daily (CBD) the synopsis of the procurement. CBD did not publish the notice, however, until September 12, 1984. On September 21, 1984, the Army issued a delivery order to IBM. Four days later, on September 25, 1984, the Army received Harris' response to the CBD notice.

By letter dated October 9, 1984, the Army notified Harris that award was made to IBM without considering Harris' offer because the offer was not received by

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September 12, 1984. That date was calculated based on the Army's belief that award could be made after the 15th day after the date in which the synopsis could be presumed to be published in the CBD. The Army relied on Department of Defense Federal Acquisition Regulation Supplement (DOD FAR Supp.) § 5.203, 48 C.F.R. § 205.203 (1984), which provides that when a synopsis is required, the contracting officer shall not issue a competitive solicitation until at least 15 days after the date of publication of a proper notice in the CBD and that the contracting officer may presume that notice has been published 5 days following transmittal to the CBD.

Pub. L. 98-72, 97 Stat. 403 (1983), which amends section 8(e) of the Small Business Act, requires all government agencies not to foreclose competition until at least 30 days (rather than 15 days as relied on by the Army) have elapsed from the date of publication of a proper CBD notice of intent to place an order under a basic ordering agreement or similar arrangement. See 15 U.S.C. § 637 (e)(2)(B) (Supp. I 1983); Math Box Inc., B-217098, Mar. 28, 1985, 85-1 C.P.D. ¶ _____. We have held that GSA ADPE schedule contracts, such as the one involved here, are in the nature of basic ordering agreements, do not involve the issuance of a competitive solicitation, and therefore the 30-day CBD notice requirement, stated above, applies. Math Box Inc., B-217098, supra. Therefore, the Army should not have placed an order until after September 28, 1984, 30 days after it could presume that the CBD published its notice. Harris' September 25, 1984, response to the CBD notice was timely received and should have been considered.

In its report on the protest, the Army contends that even if it failed to comply with the 30-day CBD notice requirement, this error did not prejudice Harris because Harris' offer, which was eventually evaluated by the Army, did not evidence compliance with all of the technical requirements established in the synopsis.

The Army's evaluation, dated November 13, 1984, states that the terminals and printers offered do meet all of the technical requirements. The evaluation, however, states that insufficient information concerning the 9116 communications controller is provided. Specifically, the Army argues that the controller is required to have the ability to interface with an IBM 4331 mainframe using Synchronous Data Link Control (SDLC) communications protocol while the information provided specifies interface with an IBM mainframe using Systems Network Architecture (SNA).

Harris contends that the Army has attempted to coverup its initial error by ruling out Harris' controller in the evaluation. Harris argues that its statement of interest letter shows that the 9116 model offered is a substitute for the IBM 3274 which was ultimately purchased. Harris contends that since its brochure stated that the 9116 had IBM SNA compatibility it automatically implied compatibility with IBM SDLC communications protocol. Harris states that SNA and SDLC are industry standards and their relationship is well known. Harris has submitted a brochure for the 9116 with its protest which lists as a standard feature, "SNA/SDLC communication protocol." The Army argues, however, that the information in the proposal was inadequate to show that the Harris 9116 would function using SDLC communications protocol. The Army, citing Informatics, Inc., B-194926, July 2, 1980, 80-2 C.P.D. ¶ 8, states that technical evaluations are made on the basis of information submitted with a proposal and the offeror cannot instead expect it to be evaluated on the basis of industry knowledge.

While we agree that generally proposals received in response to requests for proposals are evaluated on the basis of information submitted rather than on industry knowledge, we believe that the products offered by Harris did not receive fair consideration here. First, the evaluation document clearly states that the "terminals and printers offered do meet all required technical" requirements. Second, while the CRD announcement stated that all items must be compatible with IBM 4331, it did not state that offerors must show that their controllers had SDLC compatibility. We believe that the Army could have found that Harris' 9116 controller had SDLC compatibility by the fact that SNA compatibility was stated, or if any doubt existed, it could have easily resolved the matter by contacting Harris. This is particularly so because Harris' letter of interest indicated that its 9116 is a substitute for the IBM 3274 which was purchased. In our view, it was the Army's duty to make its essential requirements clear to potential offerors and allow them an opportunity to demonstrate their ability to comply before rejecting them as potential sources of supply. See Masstor Systems Corporation, 64 Comp. Gen. ____ (1984), 84-2 C.P.D. ¶ 598. We conclude that the Army lacked a reasonable basis for rejecting Harris as a source of supply, and that Harris was prejudiced by the premature award to IBM.

The protest is sustained.

The Army advises us that all of the ordered equipment, except the terminals and printers, have been delivered, installed, and paid for and that the terminals and printers have been delivered. Therefore, it is impracticable to recommend termination of the contract. By letter of today, however, we are recommending to the Secretary of the Army that steps be taken to prevent the recurrence of the procurement deficiencies found in this case.

Harry R. Van Cleve
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General Counsel